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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE GRANTSMANSHIP CENTER, INC.,
a California Corporation,

Plaintiff,

vs.

GRANT WRITING USA, INC., *et al.*,

Defendants.

Case No.: CV17-03980-R (AFMx)

DISCOVERY MATTER

STIPULATED PROTECTIVE ORDER

Complaint Filed: May 26, 2017
Trial Date: Not Yet Set

Having considered the parties' pleadings on file to date, and the parties' jointly submitted Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery or filed with the Court in this action, the Court determines as follows:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer

1 blanket protections on all disclosures or responses to discovery and that the protection it
2 affords from public disclosure and use extends only to the limited information or items
3 that are entitled to confidential treatment under the applicable legal principles.
4

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer and pricing lists and
7 other valuable research, development, commercial, financial, technical and/or
8 proprietary information for which special protection from public disclosure and from
9 use for any purpose other than prosecution of this action is warranted. Such confidential
10 and proprietary materials and information consist of, among other things, confidential
11 business or financial information, information regarding confidential business practices,
12 or other confidential research, development, or commercial information (including
13 information implicating privacy rights of third parties), information otherwise generally
14 unavailable to the public, or which may be privileged or otherwise protected from
15 disclosure under state or federal statutes, court rules, case decisions, or common law.
16 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
17 disputes over confidentiality of discovery materials, to adequately protect information
18 the parties are entitled to keep confidential, to ensure that the parties are permitted
19 reasonable necessary uses of such material in preparation for and in the conduct of trial,
20 to address their handling at the end of the litigation, and serve the ends of justice, a
21 protective order for such information is justified in this matter. It is the intent of the
22 parties that information will not be designated as confidential for tactical reasons and
23 that nothing be so designated without a good faith belief that it has been maintained in a
24 confidential, non-public manner, and there is good cause why it should not be part of
25 the public record of this case.
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1 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
2 **UNDER SEAL**

3 The parties further acknowledge, as set forth in Section 12.3, below, that
4 this Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to file
7 material under seal.

8 There is a strong presumption that the public has a right of access to
9 judicial proceedings and records in civil cases. In connection with non-dispositive
10 motions, good cause must be shown to support a filing under seal. See *Kamakana v.*
11 *City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
12 *MotorsCorp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
13 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
14 require good cause showing), and a specific showing of good cause or compelling
15 reasons with proper evidentiary support and legal justification, must be made with
16 respect to Protected Material that a party seeks to file under seal. The parties' mere
17 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
18 without the submission of competent evidence by declaration, establishing that the
19 material sought to be filed under seal qualifies as confidential, privileged, or otherwise
20 protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and the
23 relief sought shall be narrowly tailored to serve the specific interest to be protected. See
24 *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For

25 each item or type of information, document, or thing sought to be filed or
26 introduced under seal in connection with a dispositive motion or trial, the party seeking
27 protection must articulate compelling reasons, supported by specific facts and legal
28 justification, for the requested sealing order. Again, competent evidence supporting the

1 application to file documents under seal must be provided by declaration. Any
2 document that is not confidential, privileged, or otherwise protectable in its entirety will
3 not be filed under seal if the confidential portions can be redacted. If documents can be
4 redacted, then a redacted version for public viewing, omitting only the confidential,
5 privileged, or otherwise protectable portions of the document, shall be filed. Any
6 application that seeks to file documents under seal in their entirety should include an
7 explanation of why redaction is not feasible.
8

9 2. DEFINITIONS

10 2.1 Action: *Grantsmanship Center, Inc., v. Grant Writing USA,*
11 *Inc.*, USDC Case No.: CV17-03980-R (AFMx).

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.
14

15 2.3 “CONFIDENTIAL” Information or Items: information
16 (regardless of how it is generated, stored or maintained) or tangible things that qualify
17 for protection under Federal Rule of Civil Procedure 26(c), and as specified above in
18 the Good Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as
20 well as their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates
22 information or items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information,
25 regardless of the medium or manner in which it is generated, stored, or maintained
26 (including, among other things, testimony, transcripts, and tangible things), that are
27 produced or generated in disclosures or responses to discovery in this matter.
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1 2.7 Expert: a person with specialized knowledge or experience in
2 a matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.
4

5 2.8 House Counsel: attorneys who are employees of a party to this
6 Action. House Counsel does not include Outside Counsel of Record or any other
7 outside counsel.

8 2.9 Non-Party: any natural person, partnership, corporation,
9 association or other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees
11 of a party to this Action but are retained to represent or advise a party to this Action and
12 have appeared in this Action on behalf of that party or are affiliated with a law firm that
13 has appeared on behalf of that party, and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers,
15 directors, employees, consultants, retained experts, and Outside Counsel of Record (and
16 their support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces
18 Disclosure or Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide
20 litigation support services (e.g., photocopying, videotaping, translating, preparing
21 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
22 medium) and their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery
24 Material that is designated as "CONFIDENTIAL."

25 2.15 Receiving Party: a Party that receives Disclosure or
26 Discovery Material from a Producing Party.
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3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or extracted
6 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
7 Protected Material; and (3) any testimony, conversations, or presentations by Parties or
8 their Counsel that might reveal Protected Material. Any use of Protected Material at
9 trial shall be governed by the orders of the trial judge. This Order does not govern the
10 use of Protected Material at trial.

11 4. DURATION

12 Once a case proceeds to trial, information that was designated as
13 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
14 an exhibit at trial becomes public and will be presumptively available to all members of
15 the public, including the press, unless compelling reasons supported by specific factual
16 findings to proceed otherwise are made to the trial judge in advance of the trial. See
17 Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
18 documents produced in discovery from “compelling reasons” standard when merits-
19 related documents are part of court record). Accordingly, the terms of this protective
20 order do not extend beyond the commencement of the trial.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for
23 Protection. Each Party or Non-Party that designates information or items for protection
24 under this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate for
26 protection only those parts of material, documents, items or oral or written
27 communications that qualify so that other portions of the material, documents, items or
28 communications for which protection is not warranted are not swept unjustifiably
within the ambit of this Order. Mass, indiscriminate or routinized designations are
prohibited. Designations that are shown to be clearly unjustified or that have been made

1 for an improper purpose (e.g., to unnecessarily encumber the case development process
2 or to impose unnecessary expenses and burdens on other parties) may expose the
3 Designating Party to sanctions.
4

5 If it comes to a Designating Party's attention that information or items that
6 it designated for protection do not qualify for protection, that Designating Party must
7 promptly notify all other Parties that it is withdrawing the inapplicable designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
11 must be clearly so designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
19 by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party has
22 indicated which documents it would like copied and produced. During the inspection
23 and before the designation, all of the material made available for inspection shall be
24 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
25 wants copied and produced, the Producing Party must determine which documents, or
26 portions thereof, qualify for protection under this Order. Then, before producing the
27 specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to
28 each page that contains Protected Material. If only a portion of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party
4 identifies the Disclosure or Discovery Material on the record, before the close of the
5 deposition all protected testimony.

6 (c) for information produced in some form other than documentary
7 and for any other tangible items, that the Producing Party affix in a prominent place on
8 the exterior of the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does not, standing alone,
14 waive the Designating Party’s right to secure protection under this Order for such
15 material. Upon timely correction of a designation, the Receiving Party must make
16 reasonable efforts to assure that the material is treated in accordance with the provisions
17 of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge
20 a designation of confidentiality at any time that is consistent with the Court’s
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the
23 dispute resolution process under Local Rule 37-1 et seq.

24 6.3 Joint Stipulation. Any challenge submitted to the Court shall
25 be via a joint stipulation pursuant to Local Rule 37-2.

26 6.4 The burden of persuasion in any such challenge proceeding
27 shall be on the Designating Party. Frivolous challenges, and those made for an
28 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other

1 parties) may expose the Challenging Party to sanctions. Unless the Designating Party
2 has waived or withdrawn the confidentiality designation, all parties shall continue to
3 afford the material in question the level of protection to which it is entitled under the
4 Producing Party's designation until the Court rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected
7 Material that is disclosed or produced by another Party or by a Non-Party in connection
8 with this Action only for prosecuting, defending or attempting to settle this Action.
9 Such Protected Material may be disclosed only to the categories of persons and under
10 the conditions described in this Order. When the Action has been terminated, a
11 Receiving Party must comply with the provisions of section 13 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

17 Unless otherwise ordered by the court or permitted in writing by the Designating
18 Party, a Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this
21 Action, as well as employees of said Outside Counsel of Record to whom it is
22 reasonably necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House
24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
25 Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to
27 whom disclosure is reasonably necessary for this Action and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;
2 (e) court reporters and their staff;
3 (f) professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this Action and
5 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (g) the author or recipient of a document containing the
7 information or a custodian or other person who otherwise possessed or knew the
8 information;

9 (h) during their depositions, witnesses, and attorneys for
10 witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the
11 deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and
12 (2) they will not be permitted to keep any confidential information unless they sign the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
14 by the Designating Party or ordered by the court. Pages of transcribed deposition
15 testimony or exhibits to depositions that reveal Protected Material may be separately
16 bound by the court reporter and may not be disclosed to anyone except as permitted
17 under this Stipulated Protective Order; and

18 (i) any mediator or settlement officer, and their supporting
19 personnel, mutually agreed upon by any of the parties engaged in settlement
20 discussions.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
22 PRODUCED IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other
24 litigation

25 that compels disclosure of any information or items designated in this
26 Action as “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such
28 notification shall include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena
2 or order to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification shall include a
4 copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to
6 be pursued by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served
8 with the subpoena or court order shall not produce any information designated in this
9 action as "CONFIDENTIAL" before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party's
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action to
14 disobey a lawful directive from another court.

15 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information
18 produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
19 information produced by Non-Parties in connection with this litigation is protected by
20 the remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery
23 request, to produce a Non-Party's confidential information in its possession, and the
24 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the
27 Non-Party that some or all of the information requested is subject to a confidentiality
28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the
2 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and
4

5 (3) make the information requested available for inspection
6 by the Non-Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this court
8 within 14 days of receiving the notice and accompanying information, the Receiving
9 Party may produce the Non-Party's confidential information responsive to the discovery
10 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
11 produce any information in its possession or control that is subject to the confidentiality
12 agreement with the Non-Party before a determination by the court. Absent a court order
13 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
14 in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has
17 disclosed Protected Material to any person or in any circumstance not authorized under
18 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
20 retrieve all unauthorized copies of the Protected Material, (c) inform the person or

21 persons to whom unauthorized disclosures were made of all the terms of
22 this Order, and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR 25 OTHERWISE PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection, the
28 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted to
6 the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the
9 right of any person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry
11 of this Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal
16 any Protected Material must comply with Local Civil Rule 79-5. Protected
17 Material may only be filed under seal pursuant to a court order authorizing the sealing
18 of the specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information in
20 the public record unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within
23 60 days of a written request by the Designating Party, each Receiving Party must return
24 all Protected Material to the Producing Party or destroy such material. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
28 must submit a written certification to the Producing Party (and, if not the same person

1 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
2 category, where appropriate) all the Protected Material that was returned or destroyed
3 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
4 compilations, summaries or any other format reproducing or capturing any of the
5 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
6 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
7 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
8 work product, and consultant and expert work product, even if such materials contain
9 Protected Material. Any such archival copies that contain or constitute Protected
10 Material remain subject to this Protective Order as set forth in

11 Section 4 (DURATION).

12 14. VIOLATION

13 Any violation of this Order may be punished by appropriate measures
14 including, without limitation, contempt proceedings and/or monetary sanctions.
15

16 IT IS SO ORDERED.
17

18
19 Dated: November 27, 2017

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21 By: 

22 Hon. Manuel L. Real
23 U.S. District Court Judge
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1
2 EXHIBIT A

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, [print or type full name], of [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Grantsmanship Center, Inc., v. Grant Writing USA, Inc.*, USDC
8 Case No.: CV17-03980-R (AFMx). I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure
10 to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint [print or type full name] of [print or type full address and
18 telephone number] as my California agent for service of process in connection with
19 this action or any proceedings related to enforcement of this Stipulated Protective
20 Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
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